IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) No.627/2007

% Date of Decision:21st November, 2007

Pawan Sharma ..... Petitioner
! Through: Mr. Navin Chawla with
Mr. Vikram Singh and
Mr.Sharath Sampath, Advocates

versus

$ Union of India ..... Respondents
^ Through: Mr. Gaurav Duggal for
respondents No.1 & 2.
Mr. Harish Gulati, standing
counsel for CBI with Mr. Amit
Kumar for respondent No.6.
Mr. Ankur Chhibber and Mr. S.K.
Nanda for respondent
No.3/UPSC.

CORAM:
* **HON'BLE MR.JUSTICE T.S.THAKUR**
* **HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

T.S.THAKUR, J. (ORAL)

Thirty years after respondent No.4 was appointed as a Grade-II, Obstetric & Gynecology Specialist in the Central Government Health Services, the petitioner, who on his own showing is a

political activist has sought quashing of the said appointment in public interest. According to the petitioner, the appointment which was made as early as in the year 1979 was illegal inasmuch as respondent No.4 who was not born as a scheduled caste claimed to have acquired that status by her marriage to respondent No.5 - admittedly a scheduled caste. The petitioner further alleges that since the appointment of respondent No.4 was illegal and at any rate irregular, once she assumed office as a specialist expert in what is described as contract award committee constituted to purchase Single and Double Puncture Laparoscopes, she paid back the debt of gratitude by approving certain supplies which the earlier expert from the Committee had held to be unacceptable. The petitioner in that backdrop not only prays for a writ of mandamus declaring the appointment of respondent No.4 to the post of Grade-II Specialist in Obstetric & Gynecology as illegal and fraudulent but also for a mandamus directing respondents No.1 to 3 not to consider her for appointment as Additional Director General of Health services. Transfer of respondent No.5 husband of respondent No.4 from the post of Medical Superintendent, Safdarjung Hospital to any other equivalent post is also the relief prayed for in the petition.

When the petition came up for admission before a Division Bench of this Court on 24.01.2007, this Court issued a notice of show cause to the respondents only in relation to prayer `a' made

in the petition. That prayer was limited to a challenge to the appointment of respondent No.4 as Grade-II, specialist in Obstetric & Gynecology in the Central Health Services. The rest of the prayers, therefore, stood deleted as indeed learned counsel for the petitioner did not even press before us the other prayers in the light of the limited scope of the enquiry which the order of this Court dated 24.01.2007 envisaged. Appearing for the petitioner Mr. Chawla, strenuously argued that the appointment of respondent No.4 was ex facie illegal. Relying upon the decision of a Single Bench of this Court in **Mrs. Urmila Ginda vs. Union of India and Others** ***AIR 1975 Delhi 115*** and that of the Supreme Court in **Valsamma Paul (Mrs) vs. Cochin University and Others** ***(1993) 3 SCC 545*** he contended that a person who did not belong to a scheduled caste could not acquire that status by marrying one belonging to that caste. He urged that since respondent No.4 did not admittedly belong to scheduled caste, no matter her husband respondent No.5 was member of that caste, she could not by marriage acquire that status. Mr. Chawla submitted that the appointment of respondent No.4 was not only irregular but even illegal as the same was made against a vacancy which was reserved for those belonging to scheduled caste.

On behalf of the respondents, it was on the other hand argued that the issue regarding the appointment of respondent No.4 had been examined in a departmental enquiry instituted by

the competent authority in which a charge was framed against respondent No.4 for providing false information to the effect that she is a member of the scheduled caste community. The said charge was held proved and the matter submitted before the CVC who took the view that respondent No.4 may have been under a genuine impression that marriage with a scheduled caste candidate could confer upon her the same status. The CVC, therefore, advised the competent authority to impose a panelty other than dismissal/removal/compulsory retirement upon respondent No.4. The matter was then submitted to UPSC, who disagreeing with the advice of the CVC suggested that a penalty of removal should be imposed upon respondent No.4. The matter was then submitted to Minister of Health and Family Welfare, who directed that respondent No.3 may be asked to reconsider its advice. Upon reconsideration also, the UPSC struck to the opinion that respondent No.4 ought to be removed from services. The matter was thereafter referred to the department of Personnel and Training for their consideration who opined as under :-

> "After careful perusal of the entire case records and taking into consideration all relevant aspects, it is seen that there is nothing to establish that Dr.(Mrs.) Sudha Salhan had knowingly and willfully misrepresented about her caste while applying for the post of Obstetrician and Gynaecologist Grade II of the Central Health Service. There is no evidence that she submitted the caste certificate of her husband as a proof of her Scheduled Caste status with any mala fide intention. Whether in terms of the Govt. instructions, she could validly claim to belong to the Scheduled Caste on the basis of the caste of the spouse, should

have been detected at the time of her appointment which was not done by the UPSC/Competent authority. Having appointed her to the post in 1979, it would be a travesty of justice to penalize her at this stage."

The matter was eventually submitted to the Prime Minsiter who in terms of entry 39(ii) of Schedule III of Transaction of business Rule, approved closure of the disciplinary case against Dr.(Mrs.) Sudha Salhan. Consequently, the Government of India by an order dated 01.11.1996 took the totality of the circumstances into consideration of disagreeing with the opinion given by the UPSC decided to close the case against respondent No.4. It was argued that in the light of the above developments, it was neither necessary nor proper for this Court to interfere with the appointment of respondent No.4 at this point of time. It was also argued that the writ petition was motivated inasmuch as the petitioner did not have any public interest at heart in filing the present petition. On the contrary it was the supply of equipment to the Central Government, which was the immediate provocation for the filing of this petition. It was contended that the equipment may have been found fault with an earlier expert on the Committee but the same was approved by respondent No.4 once she replaced the earlier expert, on the basis of her honest opinion in the matter.

We have given our careful consideration to the submissions made at the bar and perused the record. This petition is not only barred by unexplained delay and laches but appears to be motivated by extraneous considerations. The challenge to the

appointment as noticed in the beginning of the order comes nearly thirty years after the same was made. There is no explanation leave alone an acceptable one in the petition to justify the long and in ordinary delay in the filing of the petition. Mr. Chawla no doubt argued that proceedings against respondent No.4 were pending at various stages before the Government till 1996, but we see no explanation whatsoever forthcoming from the petitioner for the delay after the Government had finally settled the matter in the year 1996.

That apart the Department of Personnel and Training had in our opinion, taken a pragmatic view of the matter, when it observed that the appointing authority and even the UPSC who had subsequently advised the removal of respondent No.4 from service ought to have been diligent in verifying the claim of respondent No.4 and preventing her appointment if the same was considered to be undeserved. Having taken no such care and having allowed the appointment to go through, it did not lie in the mouth of the UPSC to advise removal of the candidate 30 years after she was allowed to join. The real purpose as rightly observed by learned counsel for the petitioner behind the filing of this petition appears to be the controversy regarding supply of equipment to the Central Government. From a reading of the averments made in the writ petition as also the prayers made therein, it is evident that for a long time the petitioner or for that matter no one else nor even a

scheduled caste candidate had made any grievance against the appointment of respondent No.4. The provocation for filing the present writ petition came only in the context of her approving the supply of equipment to the Central Government. It is not, therefore, unreasonable to assume that the petitioners' real interest lay in the making of supplies by someone in whom he was interested. We cannot allow any such ulterior motive of a political activist to inspire interference with an appointment which has worked for nearly 30 years and which has remained unquestioned for over 11 years after the Government of India gave quietus to the controversy. The present petition is in our opinion a clear abuse of the process of this Court hence deserves to be dismissed with cost.

We accordingly dismiss this petition with cost assessed at Rs.15,000/-. The costs shall be deposited in the Delhi High Court Advocates' Welfare Fund within eight weeks.

T.S.THAKUR, J

VEENA BIRBAL, J

November 21, 2007
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